

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
:  
JOHN OLIVARRIA,  
:  
Plaintiff,  
:  
- against -  
:  
BLOOMBERG L.P.,  
:  
Defendant.  
:  
-----X

Civil Action No. 08-cv-6242 (RJH)  
ANSWER AND AFFIRMATIVE  
DEFENSES OF DEFENDANT  
BLOOMBERG L.P.

Defendant Bloomberg L.P. ("Bloomberg"), by and through its undersigned counsel, Willkie Farr & Gallagher LLP, hereby answers Plaintiff's Complaint (the "Complaint") as follows:

AS TO ALLEGATIONS CONCERNING "THE PARTIES"

1. Bloomberg lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first two sentences of Paragraph 1. Bloomberg denies the allegations contained in the third sentence of Paragraph 1.

2. Bloomberg admits the allegations in Paragraph 2.

AS TO ALLEGATIONS CONCERNING "THE NATURE OF THE ACTION"

3. Bloomberg admits that Plaintiff purports to bring claims under the statutes cited in Paragraph 3, but denies that Plaintiff is entitled to relief under those statutes.

AS TO ALLEGATIONS CONCERNING "JURISDICTION AND VENUE"

4. Bloomberg respectfully submits that Paragraph 4 states a legal conclusion to which no response is necessary. Notwithstanding that, Bloomberg states that the statutes cited in Paragraph 4 confer jurisdiction on this Court over this action.

5. Bloomberg lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5.

6. Bloomberg respectfully submits that Paragraph 6 states a legal conclusion to which no response is necessary. Notwithstanding that, Bloomberg admits that its principal place of business is in the Southern District of New York, and this District is therefore the proper venue for this action.

AS TO ALLEGATIONS CONCERNING "FACTS"

7. Bloomberg lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7.

8. Bloomberg denies the allegations contained in Paragraph 8.

9. Bloomberg denies the allegations contained in the first sentence of Paragraph 9. In response to the allegations in the second sentence, Bloomberg admits that some people who work at Bloomberg refer to the area where the on-air journalists have their makeup and hair done as the Makeup Room.

10. Bloomberg denies the allegations contained in Paragraph 10.

AS TO ALLEGATIONS CONCERNING "BLOOMBERG'S FINANCIAL NEWS DIVISION"

11. Bloomberg denies the allegations contained in Paragraph 11, except to admit that Bloomberg employs journalists from various countries.

AS TO ALLEGATIONS CONCERNING "THE BRAZILIAN-ANCHOR TEAM AND THE MAKEUP ROOM HAVE A LONG HISTORY OF ANIMOSITY"

12. Bloomberg denies the allegations contained in Paragraph 12.

13. Bloomberg denies the allegations contained in Paragraph 13.

14. Bloomberg denies the allegations contained in Paragraph 14.

15. Bloomberg denies the allegations contained in Paragraph 15.

16. Bloomberg denies the allegations contained in Paragraph 16.

17. Bloomberg denies the allegations contained in Paragraph 17.

18. In response to allegations contained in the first sentence of Paragraph 18, Bloomberg admits that its employees complained to it about certain comments made by Plaintiff. Bloomberg denies the allegations contained in the second sentence of Paragraph 18.

19. Bloomberg denies the allegations contained in Paragraph 19.

20. Bloomberg denies the allegations contained in Paragraph 20.

21. Bloomberg denies the allegations contained in Paragraph 21, except to admit that Sharon Slattery and Michael Manana met with Plaintiff in a conference room after having a discussion about Plaintiff with Gary Lou and Michael Clancy.

22. Bloomberg denies the allegations contained in Paragraph 22.

23. Bloomberg cannot frame a response to Paragraph 23 because Plaintiff does not set forth the alleged statement.

24. Bloomberg denies the allegations contained in Paragraph 24.

25. Bloomberg denies the allegations contained in Paragraph 25.

26. Bloomberg denies the allegations contained in Paragraph 26.

27. Bloomberg denies the allegations contained in Paragraph 27.

28. Bloomberg denies the allegations contained in Paragraph 28.

29. Bloomberg denies the allegations contained in Paragraph 29.

30. Bloomberg denies the allegations contained in Paragraph 30.

31. Bloomberg denies the allegations contained in Paragraph 31, except to state that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning Plaintiff's beliefs.

32. Bloomberg denies the allegations contained in Paragraph 32, except to admit that Ms. Slattery called Plaintiff to inform him that Bloomberg no longer sought to use his services.

33. Bloomberg denies the allegations contained in Paragraph 33, except to state that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning Plaintiff's beliefs.

34. Bloomberg denies the allegations contained in Paragraph 34.

35. Bloomberg denies the allegations contained in Paragraph 35.

AS TO ALLEGATIONS CONCERNING "BLOOMBERG DISCRIMINATED AGAINST MR. OLIVARRIA - THE ONLY MALE IN THE MAKEUP ROOM"

36. Bloomberg states that it lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning Plaintiff's beliefs, but denies that it discriminated against him.

37. Bloomberg denies the allegations contained in Paragraph 37.

38. Bloomberg denies the allegations contained in Paragraph 38.

39. Bloomberg denies the allegations contained in Paragraph 39.

AS TO ALLEGATIONS CONCERNING "MANY ANCHORS AT BLOOMBERG WERE OUTRAGED ABOUT BLOOMBERG'S TERMINATION OF MR. OLIVARRIA'S EMPLOYMENT"

40. Bloomberg denies the allegations contained in Paragraph 40, except to state that it lacks knowledge or information sufficient to form a belief as to whether Plaintiff received calls and emails from Bloomberg employees, and as to the substance of any alleged calls and emails.

41. Bloomberg denies the allegations contained in Paragraph 41.

42. Bloomberg denies the allegations contained in Paragraph 42.

AS TO ALLEGATIONS CONCERNING “MR. OLIVARRIA SUFFERED DAMAGES AS A  
RESULT OF BLOOMBERG TERMINATING HIS EMPLOYMENT”

43. Bloomberg denies the allegations contained in Paragraph 43.

44. Bloomberg denies the allegations contained in Paragraph 44, except to state that it lacks knowledge or information sufficient to form a belief as to the Plaintiff's annual earnings.

45. Bloomberg denies the allegations contained in Paragraph 45, except to state that it lacks knowledge or information sufficient to form a belief as to Plaintiff's activities after Bloomberg stopped using his services.

46. Bloomberg denies the allegations contained in Paragraph 46, except to state that it lacks knowledge or information sufficient to form a belief as to Plaintiff's annual earnings.

47. Bloomberg denies the allegations contained in Paragraph 47.

AS TO ALLEGATIONS CONCERNING THE “FIRST CAUSE OF ACTION (Discrimination  
on the Basis of Sex and Sexual Orientation Under the New York State Human Rights Law)”

48. Bloomberg repeats and makes a part hereof, as if set forth fully at length, its answers to Paragraphs 1 to 47 of the Complaint.

49. Bloomberg respectfully submits that Paragraph 49 states a legal conclusion to which no response is necessary.

50. Bloomberg respectfully submits that Paragraph 50 states a legal conclusion to which no response is necessary.

51. Bloomberg denies the allegations contained in Paragraph 51.

52. Bloomberg denies the allegations contained in Paragraph 52.

53. Bloomberg denies the allegations contained in Paragraph 53.

AS TO ALLEGATIONS CONCERNING THE “SECOND CAUSE OF ACTION  
(Discrimination on the Basis of Sex and Sexual Orientation Under the New York City Human  
Rights Law)”

54. Bloomberg repeats and makes a part hereof, as if set forth fully at length, its answers to Paragraphs 1 to 53 of the Complaint.

55. Bloomberg respectfully submits that Paragraph 55 states a legal conclusion to which no response is necessary.

56. Bloomberg respectfully submits that Paragraph 56 states a legal conclusion to which no response is necessary.

57. Bloomberg denies the allegations contained in Paragraph 57.

58. Bloomberg denies the allegations contained in Paragraph 58.

59. Bloomberg denies the allegations contained in Paragraph 59.

60. Bloomberg denies the allegations contained in Paragraph 60.

AS TO ALLEGATIONS CONCERNING THE “THIRD CAUSE OF ACTION (Discrimination  
on the Basis of Sex under Title VII)”

61. Bloomberg repeats and makes a part hereof, as if set forth fully at length, its answers to Paragraphs 1 to 60 of the Complaint.

62. Bloomberg respectfully submits that Paragraph 62 states a legal conclusion to which no response is necessary.

63. Bloomberg respectfully submits that Paragraph 63 states a legal conclusion to which no response is necessary.

64. Bloomberg denies the allegations contained in Paragraph 64.

65. Bloomberg denies the allegations contained in Paragraph 65.

66. Bloomberg denies the allegations contained in Paragraph 66.

### **AFFIRMATIVE DEFENSES**

As further, separate, and Affirmative Defenses, without assuming the burden of proof for these defenses that would otherwise rest with Plaintiff, Bloomberg states as follows:

#### **FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim upon which an award of punitive damages or costs and attorneys' fees may be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

Bloomberg's decisions with respect to Plaintiff were not motivated in whole or in part by his status as a member of a protected class.

#### **THIRD AFFIRMATIVE DEFENSE**

The statutes under which Plaintiff purports to seek relief apply only to employees, therefore, those statutes do not apply to him.

#### **FOURTH AFFIRMATIVE DEFENSE**

Sexual orientation is not a protected class under Title VII, therefore, to the extent Plaintiff is complaining under Title VII of discrimination based on his sexual orientation, his claim is not cognizable.

#### **FIFTH AFFIRMATIVE DEFENSE**

Upon information and belief, Plaintiff's claims are barred in whole or in part by his failure to mitigate damages.

### **PRAYER FOR RELIEF**

WHEREFORE, Bloomberg respectfully requests that the Court deny the relief Plaintiff requested in his Complaint and enter judgment dismissing the Complaint with prejudice, and awarding Bloomberg its costs and expenses of this action, including reasonable attorneys' fees, and any other relief that this Court may deem just and appropriate.

Dated: July 31, 2008

WILLKIE FARR & GALLAGHER LLP

By: \_\_\_\_\_/s\_\_\_\_\_  
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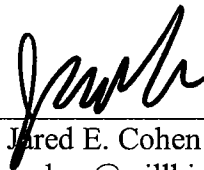
Attorneys for Defendant  
Bloomberg L.P.



**CERTIFICATE OF SERVICE**

The undersigned, a member in good standing of the bar of this Court, certifies that on July 31, 2008 he caused a copy of the ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT BLOOMBERG L.P. to be served by U.S. mail upon the following counsel of record:

Andrea Paparella, Esq.  
Liddle & Robinson, L.L.P.  
800 Third Avenue  
New York, NY 10022

A handwritten signature in black ink, appearing to read "Jared E. Cohen", is positioned above a horizontal line.

Jared E. Cohen  
jcohen@willkie.com